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August 5, 1982

Dear

In furtherance of our recent conversation concerning the effect lobbying activities might have on the availability of the church, religious, and welfare exemptions from property taxation, the following excerpts from one of our May 6, 1977, letters, relating to the Tax Reform Act of 1976, coincide with what I stated as to availability of the welfare exemption:

"As you are aware, the welfare exemption... requires that two basic tests be met. The first is an organizational and operational requirement; the second relates to the actual physical use made of the property by an organization claiming the exemption.

"With respect to the former, it is our opinion that an organization making an election of the new limited lobbying provisions pursuant to the Tax Reform Act of 1976 may satisfy the organizational/operational requirements, provided that (1) the lobbying activity is directly connected with the furtherance of the exempt purpose of the organization, and (2) the salary paid the lobbyist is not excessive.

"The latter 'use test' requires that the property be exclusively used for religious, hospital, scientific, or charitable purposes. Moreover, Section 214(3) of the Revenue and Taxation Code requires that the property be

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used for the actual operation of an exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose. In this regard, it is our opinion that property used primarily or exclusively for lobbying purposes as opposed to charitable, etc., purposes, does not satisfy the use requirement and, therefore, would not be eligible for exemption. On the other hand, if an otherwise qualified organization conducts lobbying activities which are incidental to its exclusive exempt use of the property, then the welfare exemption will not be denied.

"Of course, if an organization lost its exempt status under Section 501(c)(3) of the Internal Revenue Code because of excessive lobbying expenditures, then it would also lose its property tax welfare exemption."

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. William Grommet
Legal Section

Attachment: Internal Revenue Code Sections 501(b) and 504, as added by Tax Reform Act of 1976. Note that Section 501(b)(5) and (7) provides that churches, associations of churches, etc., are disqualified organizations; and that in the case of disqualified organizations, nothing in subsection (b) is to be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is...attempting, to influence legislation," under subsection (c)(3). You may wish to discuss these subsections and their ramifications with an Internal Revenue Service representative if you have not already done so.